IN THE HIGH COURT OF JUDICATURE,

ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

And
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 16384 of 2004

Between:

G.Venkat Reddy, Retired Head Master, S/o.Buchi Reddy, Z.P.H.S.Mujahidpur, RR Dist.

..... PETITIONER

AND

1 The Chief Executive officer, Z.P.R.R.District.
2 The Audit officer, Local Funds, R.R.District, Hyderabad.
3 The District Educational Officer, RR Dist. Hyderabad.
4 The Regional Joint Director of School Education, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate order or writ, more particularly a writ of mandamus, declaring the promotion of Sri M.Ramagopal as panel grade Head Master on 13-3-70 notional and the orders of the Honourable Tribunal dated 10-9-2003 dismissing the O.A.No. 6441 of 1998 with M.A.No.847/2003 as arbitrary, unjust and consequently direct the respondents to give notional promotion to the petitioner with effect from 13-3-70 on par with his Junior Sri M.Ram Gopal, issued in proc.No.E1/11273/97-13, dt.18-5-98 of CEO, Z.P.RR District with consequential benefits of pay and allowances as panel grade Headmaster from 13-3-1970 to 31-10-1992 and thereafter enhancing pension and other retiral benefits with effect from 1-11-92.

Counsel for the Petitioner:MR.P.RAMABRAHMAM

Counsel for the Respondent No.1: SMT.JYOTHI ESWAR GOGINENI.

Counsel for the Respondent Nos.2 to 4 : G.P. for School Education.

The Court at the stage of admission made the following :

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ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

This writ petition is filed with the prayer as follows:

" For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Honourable Court may be pleased to issue an appropriate order or writ, more particularly a writ of mandamus, declaring the promotion of Sri M.Ramagopal as panel grade Head master on 13.3.70 notional and the orders of the Honourable Tribunal dated 10.9.2003 dismissing the O.A.No.6441 of 1998 with M.A.No.847/2003 as arbitrary, unjust and consequently direct the respondents to give notional promotion to the petitioner with effect from 13.3.70 on par with his junior Sri M.Ram Gopal, issued in Proc.No.E1/11273/97-13 d/18.5.1998 of CEO, Z.P.RR district with consequential benefits of pay and allowances as panel grade Headmaster from 13.3.1970 to 31.10.1992 and thereafter enhancing pension and other retrial benefits with effect from 1.11.92 and pass such other order or orders deemed fit and just."

The petitioner is the unsuccessful applicant in O.A.No.6441 of 1998 on the file of the A.P. Administrative Tribunal. The case of the petitioner is that initially he was appointed as School Assistant in Z.P. High School of Ranga Reddy District in the year 1962 as an Untrained Graduate Teacher, thereafter he was promoted as School Assistant Grade-II on acquisition of B.Ed., qualification. He was also promoted as School Assistant Grade-I with effect from 14-06-1998 and thereafter awarded special promotion on completion of 15 years of service in the category of B.Ed Assistant. He was further promoted as Panel Grade Headmaster on 27-02-1985 and retired as such. Consequences of the events and the factual background of the case are very clearly narrated in the order impugned in the present writ petition and the same can be extracted beneficially herein:

"The Government have issued orders in Memo.No.1962-K1/73-4, dated 5.3.1974 to the effect that the untrained Graduate Teachers who were appointed against the post of School Assistant, Gr.II carrying the scales of Rs.96-200/130-250/150-300 and allowed the scales of Rs.80-150/100 and Rs.96-200/126 should be deemed to have been allowed the minimum of Rs.130/- and Rs.150/- in the scale of Rs.130-250/150-200 and such Teachers are eligible for Rs.130/- and Rs.150/- for the purpose of calculating paper increments, as per para 17© of G.O.Ms.No.1818, Education, dated 4.12.1971 and the monetary benefits shall be allowed from the date of passing the B.Ed. Examination. Thus, it is the case of the applicant that he is legally entitled

for the scale of Rs.130-250/150-300 from the date of his appointment, i.e., from 21.7.1962 and his pay be regulated under the said orders, allowing the monetary benefits from December, 1969. The grievance of the applicant is that he was allowed the scale of School Assistant, Gr.II for which he is eligible as Untrained Graduate from 15.6.1971 instead of 21.7.1962. It is stated by the applicant that he is also eligible for all other attendant benefits such as promotion to the post of School Assistant, Gr.I, Special Grade Post and Special Promotion Post under Automatic Advancement Scheme and Panel Grade Headmaster very much earlier than from the date of promotion with effect from 15.6.1971 and 27.2.1989 respectively.

It is the case of the applicant that he had made several representations to the respondents to consider his case and ultimately, he filed R.P.No.31674/89 on the file of this Tribunal. This Tribunal disposed of the said R.P. on 27.8.1994, directing the District Development Officer, ZPP, Rangareddy to dispose of the representation filed by the applicant, with a liberty to the applicant to file any further representation, if necessary.

In pursuance of the aforesaid orders, the applicant made a representation to the respondents to consider his case, and the Chief Executive Officer, Z.P., Rangareddy District, in proceedings No.e1/15153/96, dated 14.6.1997, promoted the applicant with effect from 1.12.1983 as Headmaster on par with one, Y.Nageswar Rao, who is junior to the applicant, instead of considering his case with effect from 13.3.1970, i.e., the date on which his junior, one, M.Ramgopal was promoted to the post of Headmaster, notionally from the date of issue of G.O.Ms.No.538, dated 13.3.1970, vide proceedings dated 18.5.1998 of the Chief Executive Officer, Z.P., Rangareddy.

Therefore, it is the contention of the applicant that the action of the respondents in not considering his case for promotion to the post of Headmaster from the date on which his junior was promoted as such, with consequential benefits. Hence, this O.A."

The substance of the matter is that the petitioner claims that though he and one Mr. Ramgopal, who is not a party to the O.A. or to the present writ petition, did not pass the requisite departmental examination, i.e., the Accounts Test, the above mentioned Ramgopal was promoted as Headmaster notionally with effect from 13-03-1970 vide proceedings dated 18-05-1998 of the Chief Executive Officer, Z.P., Rangareddy, while the petitioner was not given the same benefit. It is further the case of the petitioner that the above mentioned Ramgopal is junior to him in service. Though for promotion as Headmaster, both the petitioner as well as the above mentioned Ramgopal are required to pass the Accounts Test, and though both of them did not pass the same, Ramgopal was illegally given the benefit of the notional

promotion as mentioned above, and, therefore the petitioner also is entitled for a similar treatment at least with effect from the date on which the above mentioned Ramgopal was given the benefit. The Tribunal did not accept the submissions made by the petitioner and hence, the present writ petition.

Even if we presume for the purpose of the present writ petition that the promotion given to the above mentioned Ramgopal is illegal, we make it clear that we are not making any observation on that, as Mr. Ramgopal is not a party to these proceedings. One illegality, in our view, does not create any enforceable legal right in favour of the other, who claim to be similarly situated as that of the beneficiary of the illegal orders passed by the State. It is a settled principle that Article 14 of the Constitution has no application in such a situation.

In the circumstances, we do not see any merits in the writ petition and the same is dismissed at the stage of admission. No costs.

J.Chelameswar, J

Goda Raghuram, J

27th October, 2004.

mrk

To

1. The Chief Executive officer, Z.P.R.R.District.
2. The Audit officer, Local Funds, R.R.District, Hyderabad.
3. The District Educational Officer, RR Dist. Hyderabad.
4. The Regional Joint Director of School Education, Hyderabad.

5. Two CCs to the G.P. for School Education, High Court of A.P., Hyderabad (OUT).

6. Two CD Copies.